

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO

RALPH D. BUCKWALD,

Petitioner,

V.

CUYAHOGA COUNTY JAIL, et al.,

Respondents.

CASE NO. 1:11 CV 1169

JUDGE DAN AARON POLSTER

MEMORANDUM OF OPINION  
AND ORDER

On June 7, 2011, petitioner *pro se* Ralph D. Buckwald filed the above-captioned petition for writ of habeas corpus under 28 U.S.C. § 2254. The petition and supplementary documents filed by Buckwald challenge his convictions for refusal to submit to testing, fictitious license plates, and driving an unsafe vehicle. For the reasons stated below, the petition is denied and this action is dismissed.

A federal court may entertain a habeas petition filed by a person in state custody only on the ground that he is in custody in violation of the Constitution, laws, or treaties of the United States. 28 U.S.C. § 2254(a). In addition, petitioner must have exhausted all available state remedies. 28 U.S.C. § 2254(b).

As grounds for the petition, Buckwald appears to assert his sentence was improperly increased, the trial court did not timely send his appeal related papers to the Ohio Court of Appeals, and he was not given the correct amount of jail time credit. Buckwald's appeal was dismissed *sua sponte* for failure to file a timely appeal. There is no indication, however, that he appealed this decision. Further, the Ohio Court of Appeals for Cuyahoga County Docket reflects that Buckwald

has not yet appealed the dismissal of his appeal. *City of Fairview Park v. Buckwald* Case No.CA-11-096836. [http://cpdocket.cp.cuyahogacounty.us/p\\_CV\\_Docket.aspxpublic](http://cpdocket.cp.cuyahogacounty.us/p_CV_Docket.aspxpublic). Such review may be available, *see* Ohio Sup.Ct.R.P. II, sec. 2(A)(4)(a), and must be sought in order to exhaust state court remedies. *Rust v. Zent*, 17 F.3d 155, 160 (6th Cir. 1994). Thus, without regard to the potential merits of the grounds sought to be raised herein, the petition is premature, as petitioner has not exhausted his state court remedies.

Accordingly, this action is dismissed without prejudice pursuant to Rule 4 of the Rules Governing Section 2254 Cases. Further, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith, and that there is no basis on which to issue a certificate of appealability. Fed.R.App.P. 22(b); 28 U.S.C. § 2253.

IT IS SO ORDERED.

/s/Dan Aaron Polster 7/13/11  
DAN AARON POLSTER  
UNITED STATES DISTRICT JUDGE